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Regulation of estate agents



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Summary

Many people who sell a property in the UK will use the marketing services of an estate agency. Estate agency work is defined by the [Estate Agents Act 1979](#) (EAA 1979) as:

“[...] introducing and/ or negotiating with people who want to buy or sell freehold or leasehold property (including commercial or agricultural property) where this is done in the course of a business pursuant to instructions from a client.”

Estate agents are not currently required by law to be licensed or qualified. In Scotland, where property law is different, a solicitor will manage much of the property sale. In England, Wales, and Northern Ireland, unless an estate agent is also a qualified chartered surveyor, they will liaise with other professional bodies.

Estate agents are principally regulated by the EAA 1979 and the [Consumer Protection from Unfair Trading Regulations 2008](#). In addition to this statutory regulation, since 1 October 2008 all estate agents in the UK who engage in residential estate agency work are required to belong to an approved redress scheme, either [The Property Ombudsman](#) or the [Property Redress Scheme](#). This is a requirement of the [Consumers, Estate Agents and Redress Act 2007](#).

The [National Trading Standards Estate and Letting Agency Team](#) (NTSELAT) of Powys County Council protects consumers and businesses by enforcing the EAA 1979. The team will assess whether an individual or business in any part of the UK is fit to carry out estate agency work within the terms of the EEA 1979. It took over this enforcement role from the Office of Fair Trading (OFT) in April 2014.

In recent years there has been calls for the Government to strengthen regulation by requiring all estate agents to be properly licensed and qualified. The [Conservative Party Manifesto 2017](#) committed to “reform and modernise the homebuying process so it is more efficient and less costly”. The [Regulation of Property Agents: Working Group](#) was set up in October 2018 to advise the Government on a new regulatory approach to letting, managing and estate agents, in line with the Government’s responses to its calls for evidence on [Protecting Consumers in the letting and managing agent market](#) and [Improving the home buying and selling process](#).

This briefing paper provides an outline of the current regulation of estate agents. It also looks at past market studies and consultations and considers in detail recent government proposals to tighten regulation.

1

Introduction

On 1 October 2013 two important legal changes were made to the regulation of estate agents. First, the repeal of the [Property Misdescriptions Act 1991](#), following a government consultation, and secondly, an amendment to the [Estate Agents Act 1979](#) (EAA 1979). Estate agents are now principally regulated by the EAA 1979 and the [Consumer Protection from Unfair Trading Regulations 2008](#). Both are enforced by local authority Trading Standards.

For the purposes of section 1 of the EAA 1979, estate agency work includes introducing and/ or negotiating with people who want to buy or sell freehold or leasehold property (or their Scottish equivalents) including commercial or agricultural property where this is done:

- in the course of a business, and
- pursuant to instructions from a client.

Typically, an estate agent will market a property for sale, arrange viewings, and be involved in negotiations on price. In England and Wales there is no legally binding contract at the point when a seller accepts an offer; there is only the potential for a transaction at a verbally agreed price. This means that until exchange of contracts, either side can pull out without being liable to the other for any losses incurred. The situation is different in Scotland, where there are different property laws. In Scotland, there is a much earlier legally binding agreement between the buyer and seller of a property.

In addition to traditional residential estate agent offices, new business models have emerged in the UK including, online agents and private seller websites.

2

Who can be an estate agent?

Professional qualifications

Currently, estate agents are not required by law to be licensed or qualified. However, professional bodies, trade associations and others offer a range of courses and certifications, and many agents have voluntarily undertaken one (or more) of these. For example, the [Royal Institution of Chartered Surveyors](#) (RICS) and [Propertymark](#) both offer qualification courses.¹

Concerns have been raised in the past about some estate agents pursuing misleading practices designed to close a deal.² The sector has also been criticised for the lack of transparency about estate agent fees and contracts.³

Research by the Homeowners Alliance in 2013 found only 20% of homeowners and aspiring homeowners trusted estate agents when buying or selling a home, a far lower level than for conveyancers, surveyors or mortgage lenders.⁴ Only 30% of respondents to an annual survey conducted in 2018 by the market research company Ipsos Mori agreed with the statement that they trusted estate agents to tell the truth: this was less than half of the 62% who trust “the average person on the street”.⁵ However, Department for Business, Energy and Industrial Strategy (BEIS) consumer research (2017) found that 82% of buyers and 83% of sellers surveyed were satisfied with the service they received from estate agents.⁶

According to a recent report by the [Regulation of Property Agents Working Group](#), “this lack of trust harms estate agents, and many of those we have spoken to want to be regulated in order to improve public confidence in their industry”.⁷

Others have expressed concern that enforcement of the existing regulatory framework for estate agents is weak. According to the Conveyancing Association:

The issue is that the redress schemes take over six months to hear a complaint and NTS [National Trading Standards] in particular are under resourced and unable to enforce the existing regulation. NTS

¹ [Propertymark](#) launched in February 2017 combining five different associations into a single brand (namely ARLA, NAEA, NAVA, ICBA and APIP).

² Department for Business, Energy and Industrial Strategy (BEIS), [Research on buying and selling homes: Research paper number BIS/283](#), 22 October 2017, p3

³ HomeOwners Alliance, [Why the mystery?](#), 7 March 2014

⁴ HomeOwners Alliance, [Connecting with the concerns of homeowners and aspiring homeowners](#), 2013, p22

⁵ [Regulation of Property Agents Working Group – Final Report](#), July 2019

⁶ Department for Business, Energy and Industrial Strategy (BEIS), [Research on buying and selling homes: Research paper number BIS/283](#), 22 October 2017, p57

⁷ Ibid

issued just 11 prohibition notices last year and its goal is to double that this year, but without improved resourcing it cannot properly regulate the industry.⁸

There have been calls to strengthen the regulation of estate agents by introducing minimum professional standards.⁹ It is suggested that this would help professionalise the industry, improve services and reassure consumers.¹⁰ It would also align with Government plans to regulate letting and property management agents.¹¹

⁸ The Conveyancing Association, [Responses to DCLG Call for Evidence](#), undated, p2

⁹ See for example: '[RICS calls for compulsory qualifications for all agents](#)', RICS press notice, 3 May 2013

¹⁰ Ibid

¹¹ Ministry of Housing, Communities and Local Government, "[Improving the home buying and selling process: summary of responses to the call for evidence and government response](#)", April 2018

3

Who regulates estate agents?

1. National Trading Standards Estate and Letting Agency Team (NTSELAT)

The NTSELAT is responsible for:

- issuing individual banning or warning orders under the EAA 1979,
- maintaining a public register of such banning or warning orders,
- approving and monitoring consumer redress schemes, and
- providing specific advice and guidance to businesses and consumers about their rights and obligations under the EAA 1979.

The [National Trading Standards Estate and Letting Agency Team](#), (NTSELAT) is responsible for regulating estate agents across the UK.¹² It is the lead enforcement authority for the EAA 1979.¹³ Powys County Council delivers this team on behalf of the National Trading Standards Board (NTSB); a direct grant funding arrangement is in place between the council and the NTSB.¹⁴

The remit of the NTSELAT is to assess whether an individual or business in any part of the UK is fit to carry out estate agency work within the terms of the EAA 1979; a breach of the Act is investigated by Trading Standards officers. If they believe that the conduct of a particular estate agency is in violation of certain provisions of the Act, they can refer the case to the NTSELAT for consideration of a banning or warning order.

Since the 1 April 2014, the NTSELAT has also:

- maintained a public register on banning or warning orders,
- approved and monitored consumer redress schemes, and
- provided specific advice and guidance to businesses and consumers about their rights and obligations under the EAA 1979.

¹² The NTSELAT took over this role from the Office of Fair Trading (OFT) in April 2014

¹³ In addition to the [EAA 1979](#), the [NTSELAT](#) also enforces the [Tenant Fees Act 2019](#); letting agency regulation (covering England) is led by Bristol City Council and estate agency enforcement (across the UK) is operated from Powys County Council. The NTSELAT works closely with local authorities who have local enforcement responsibilities.

¹⁴ The NTSELAT is funded by the Ministry of Housing, Communities and Local Government

In August 2020, the NTSELAT updated its [guidance](#)¹⁵ to help property sales businesses comply with the [Consumer Protection from Unfair Trading regulations 2008](#) (CPRs) and the [Business Protection from Misleading Marketing Regulations 2008](#) (BPRs) when carrying out activities in the UK.

¹⁵ National Trading Standards Estate and Letting Agency Team (NTSELAT), "[Guidance on Property Sales and Lettings – Compliance with the Consumer Protection from Unfair Trading Regulations 2008 and the Business Protection from Misleading Marketing Regulations 2008](#)", August 2020

4

Relevant legislation

2. Regulation of estate agents

Relevant legislation:

- [Estate Agents Act 1979](#)
- [Consumer Protection from Unfair Trading Regulations 2008](#)
- [Business Protection from Misleading Marketing Regulations 2008](#)
- [Consumer Contracts \(Information, Cancellation and Additional Charges\) Regulations 2013](#)
- [Consumers, Estate Agents and Redress Act 2007](#)
- [Town and Country Planning \(Control of Advertisements\) Regulations 1992](#)

4.1

Estate Agents Act 1979 (EAA 1979)

3. Overriding aim of the EAA 1979:

- The [EAA 1979](#) regulates estate agency work.
- Its purpose is to make sure that estate agents act in the best interests of their clients, and that both buyers and sellers are treated honestly, fairly, and promptly.
- Estate agents who do not comply with the law, could be banned from working as an estate agent. If they ignore the ban, they could be prosecuted and fined.

Estate agents are principally regulated by the [EAA 1979](#) and subsequent orders. By law, a person is an estate agent if they:

- deal with people who want to buy or sell freehold or leasehold property, throughout the UK (this includes commercial and agricultural property);¹⁶ do this as part of a business; and act on instructions from a client.

¹⁶ For the purposes of the [Estate Agents Act 1979](#), the definition of estate agency work does not cover the letting of properties

In other words, the legal definition of what constitutes estate agency work is wide. Even if a person doesn't call themselves an estate agent they may be seen to be one in law, whether they work for themselves or for someone else. A person will be misleading consumers if they state that they are not doing estate agency work when they are.

For the purposes of the EAA 1979, a person cannot be an estate agent if:

- they are an undischarged bankrupt (although they can work for another estate agency, as long as it is not their own company); or the NTSELAT has banned them from this work (see below).

If a person is merely “publishing advertisements or disseminating information” (such as in a newspaper or similar publication), then for the purposes of the EAA 1979 they will not be acting as an estate agent.

Below is a non-exhaustive list of examples of the types of activities typically carried out by property retailers that the NTSELAT consider would take them beyond the exemption of merely publishing advertisements or disseminating information. If a person engages in such activities, they will be (or are likely to be) engaging in estate agency work:

- Sending out property particulars and arranging viewings
Offering personal advice to potential sellers or buyers
Receiving and fielding queries from potential sellers or buyers and passing on details to your clients
Providing an energy performance certificate or arranging for it to be provided
Providing clients with a 'For Sale' board and/or putting it up outside their property where the board contains your contact details, and you deal with potential buyers on behalf of the seller.

Intermediaries

Intermediaries, such as internet property portals for private sales, are currently exempt from the definition of an estate agent provided by EEA 1979.¹⁷ Intermediaries introduce buyers and sellers wishing to arrange private property sales (usually through online portals) without giving advice or handling clients' money fall outside of the Act. This exemption applies provided the business does nothing else covered by the general definition of estate agency work.¹⁸

¹⁷ The [Enterprise and Regulatory Reform Act 2013 \(Commencement No.3, Transitional Provisions and Savings\) Order 2013](#) essentially widened the categories of those to whom the EAA 1979 does not apply

¹⁸ Section 1(4) of the EAA 1979, as amended by the [Enterprise and Regulatory Reform Act 2013 \(Commencement No.3, Transitional Provisions and Savings\) Order 2013](#). This Order has widened the categories of those to whom the EAA 1979 does not apply. Intermediaries who introduce buyers and sellers wishing to arrange private sales, usually through online portals, without giving advice or handling clients' money will now fall outside of the regulation required of estate agents.

Minimum standards of behaviour for all estate agents

As outlined above (see **Box 3**), the purpose of the EAA 1979 is to make sure that estate agents work in the best interests of their clients, and that both buyers and sellers are treated “honestly, fairly and promptly”. To this end, the Act sets out the minimum standards of behaviour across the profession. Specifically, the EAA 1979 covers:

- duties that estate agents owe to clients and third parties (such as the passing on of offers, handling money and giving details of charges and terms of business), information to clients, declaring a personal interest in a transaction, handling negotiations (including which records must be kept of offers received);
- handling clients’ money, insurance that must be taken out to cover liabilities arising out of the estate agency business;
- enforcement of the Act, and estate agency redress schemes.

Negative licensing regime

In effect, the EEA 1979 regulates the conduct of estate agents in the course of their estate agency work. When investigating an estate agent, the NTSELAT can require anyone (including clients and potential buyers) to give information or produce documents. The EAA 1979 empowers the NTSELAT to issue warning or prohibition notices against those persons whom it considers to be unfit to carry on estate agency work.

The EAA 1979 is often described as imposing a “negative” licensing regime. An estate agent shown to have breached certain provisions of the Act, and/or to have been convicted of certain criminal offences (such as fraud or other serious dishonesty offences) may be banned from continuing in estate agency work.

Consumer Protection from Unfair Trading Regulations 2008

4. Consumer Protection from Unfair Trading Regulations 2008 (the ‘CPRs’)

- On 1 October 2013, the Property Misdescriptions Act 1991 (PMA 1991) was repealed, following a consultation by BIS.¹⁹ Estate agents must now comply with the [Consumer Protection from Unfair Trading Regulations 2008](#) (known as the CPRs).
- The CPRs, which are non-specific to the property sector, are wider in scope than the PMA 1991.
- The Regulations extend to all situations where estate agents engage with consumers, this includes not only when dealing with a paying client but also when advertising for business and targeting potential viewers or perspective clients. The CPRs also control descriptions used by estate

¹⁹ Department for Business Innovation & Skills, ‘[Consultation on the repeal of the Property Misdescriptions Act 1991](#)’, January 2011

agents and create criminal offences for traders that breach the Regulations.

In a nutshell, the [CPRs](#) provide consumer protection from unfair or misleading trading practices, misleading omissions, and aggressive sales tactics. A practice undertaken by an estate agent will be unfair if it distorts, or is likely to distort, the economic behaviour of the average consumer in their transactional decision making. This means that estate agents must use care when using general descriptions relating to location, environment, photographs, measurements, parking, and pricing. For example, failing to disclose a serious problem with title or information about the condition of the property may be regarded as misleading by omission under the CPRs. The CPRs do not prevent the estate agent from acting in the seller's interests by presenting the property in the best light, provided what they say, or do not say, does not mislead the purchaser.

The use of disclaimers by estate agents

The CPRs do not prohibit the use of disclaimers. However, it is generally accepted that disclaimers in small print, telling buyers not to rely on details, would not be effective in preventing offences. In particular, they are unlikely to be effective in relation to any misleading omission under the CPRs. This also applies to information provided on an estate agents website. The CPRs also cover the pricing of properties. Consequently, estate agent must be careful not to mislead consumers about the previous price of a property if they are claiming a reduction in price.

Another set of regulations, the [Business Protection from Misleading Marketing Regulations 2008](#) (known as the 'BPRs'), sit alongside the CPRs and govern misleading practices when dealing with other businesses, for example, when liaising with other estate agents about marketing the same property or when marketing a property to business customers. The BPRs ban misleading advertising - which is advertising that deceives (or is likely to deceive) other traders - and either:

- is likely to affect their economic behaviour or
- injure a competitor

The BPRs also regulate comparative advertising. This type of advertising is permissible if the comparisons are fair, objective, and can be substantiated.

4.3

Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013

Consumer agrees a contract with an estate agent at home

These Regulations will apply to a trader selling goods, services, or digital content to a consumer. The Regulations set out:

- the information which a trader must give to a consumer before and after making a sale
- how that information should be given
- the right for consumers to change their minds when buying at a distance or off-premises
- delivery times and passing of risk
- a prohibition on any additional payments which appear as a default option • a prohibition on consumers having to pay more than the basic rate for post-contract customer helplines.

These regulations apply to contracts concluded on or after 13 June 2014.²⁰ Where the Regulations apply, the consumer has a right to cancel the contract within a set period (14 calendar days), and the Regulations set out strict requirements as to how this right to cancel must be communicated to the consumer. If this right to cancel is exercised then in most cases the contract is treated as if it had never been entered into and monies paid become recoverable.

Although the Regulations exempt contracts which create rights in immovable property (i.e land), estate agents still need to comply with the Regulations. This is because the exemption relates to the contract between the vendor or landlord/lessor and the buyer or tenant/lessee, and **not** to associated services such as marketing, vetting, inventory listing etc. by estate agents.

²⁰ On this date the Cancellation of Contracts made in a Consumer's Home or Place of Work (etc.) Regulations 2008 (the so-called 'Distance Selling Regulations 2000') and the Off-Premises (Doorstep) Regulations 2008 were revoked

4.4

Consumers, Estate Agents and Redress Act 2007

Legal requirement on estate agents to belong to an approved redress scheme.

The [Consumers, Estate Agents and Redress Act 2007](#) (the CEARA 2007) places a requirement on estate agents to belong to an approved redress scheme. A person must join a redress scheme if they are:

- an estate agent dealing with residential properties in the UK
- a letting agent or property manager in England or Wales

The approved redress schemes are:

- [The Property Ombudsman](#)
- [Property Redress Scheme](#)

If a consumer's complaint about an estate agent cannot be resolved by contacting the agency directly, the consumer can make a formal complaint to the relevant redress scheme.

The [CEARA 2007](#) also implements measures to improve the regulation of estate agents by:

- requiring estate agents to make and keep records, including records of offer letters, for a period of six years,
- giving the [NTSELAT](#) (the National Trading Standards Estate and Letting Agency Team) and local Trading Standards officers powers to require access to premises and on-site production of records in a wider range of circumstances, and
- expanding the circumstances in which the NTSELAT can consider the fitness of an estate agent to practice and issue prohibition or warning notices under the EAA 1979.

4.5

Town and Country Planning (Control of Advertisements) Regulations 1992

Schedule 3 of the [Town and Country Planning \(Control of Advertisements\) Regulations 2007](#) applies conditions and limitations to advertisements relating to the sale or letting of land or property.²¹

²¹ SI 2007/783

Estate agents “for sale” and “sold” advertising boards

Specifically, [Part 1 of Schedule 3](#), paragraph 3A(3) states:

The advertisement shall be removed within 14 days after the completion of a sale or the grant of a tenancy.

In short, once the conveyance of a property has gone through, or premises have been let, any advertising sign (such as ‘For sale’, ‘Sold’ or ‘To let’ signs) may only be displayed outside the property by an estate agent for a maximum period of 14 days.

4.6

Money Laundering Regulations 2007

Legal obligation on estate agents to prevent money laundering

The [Money Laundering Regulations 2007](#) came into force across the UK on 15 December 2007. The purpose of the Regulations is to detect, deter and disrupt financial crime and terrorist financing by reducing the possibility of legitimate businesses being used for money laundering. Anyone who engages in estate agency work within the meaning of [section 1](#) of the EAA 1979 must comply with the regulations (including internet property retailers).

In practice, this means that estate agents must put in place procedures to anticipate and prevent money laundering, and to verify their client’s identity, before entering into a business relationship with them. In addition, estate agents must keep proper written records of transactions.

On 1 April 2014, the OFT’s anti money laundering powers and responsibilities in respect of estate agents passed to [HM Revenue and Customs](#).

5

Past market studies

OFT market study,
2004

The Office of Fair Trading (OFT) (a non-ministerial government department which closed in 2014) carried out a market study in 2004 into the estate agency market in England and Wales. In its report, the OFT concluded that some consumers were not satisfied with the services they received and that price competition between estate agents was limited. It made several recommendations designed to encourage estate agents to provide better services and more competitive fees.²²

Carlsberg report,
2008

Subsequently, there were calls by a range of stakeholders for the Government to consider introducing a registration or “positive” licensing scheme for estate agents.

In July 2007, the [RICS](#) together with the National Association of Estate Agents (NAEA) and the Association of Residential Letting Agents (ARLA)²³ announced an inquiry into the regulation of those providing residential property services. This inquiry to be chaired by Sir Bryan Carsberg. A consultation paper, published in September 2007, noted that, looking at the property market as a whole:

“[...] the sums of money involved are enormous, and yet it seems that we are not approaching the management of consumer risk in this sector through regulation in any coherent manner ... [T]he residential market ... remains a sector with regulatory structures that have developed piecemeal.”

The Carlsberg report was published in June 2008.²⁴

OFT market study,
2010

On 18 February 2010 the OFT published a second report, ‘[Home buying and selling – A market study](#)’.²⁵ According to this report, consumer satisfaction with traditional estate agents had improved in recent years:

We [the OFT] found that 12 per cent of consumers were dissatisfied with the service provided by their estate agent, down from 2004 when we found dissatisfaction among sellers and buyers of 26 and 28 per cent respectively.²⁶

²² Office of Fair Trading, ‘[Estate Agency Market in England and Wales](#)’, OFT 693, March 2004 (not online)

²³ The NAEA and the ARLA are now part of [Propertymark](#), launched in February 2017

²⁴ ‘[Carsberg Review of Residential Property: standards, Regulation, Redress and Competition in the 21st Century](#)’, June 2008 (not online)

²⁵ Office of Fair Trading, ‘[Home buying and selling – A market study](#)’, OFT 1186, February 2010

²⁶ Ibid

The report made several recommendations to improve the home buying process, summarised by the OFT as follows:

We believe that the best way to tackle the lack of price competition is through promoting and encouraging new business models. Innovation in this sector would provide greater choice for consumers and would put pressure on the traditional ways of buying and selling a home. Regulation for these new models could safely be lighter and the current legislation may be preventing, or discouraging, innovation.

We recommend that the existing legislation should be updated as soon as possible. We found that most online estate agents can now access the major portals. We do not, therefore, believe that there is currently a need to intervene to ensure that online estate agents are able to access the major internet property portals. This is an area we will be monitoring closely in the future.

We have considered carefully the arguments for and against introducing a dedicated regulatory regime for estate agents and have weighed the potential costs of doing so against the risks consumers face in this sector, the evidence we have of consumer harm, and the likely success of a licensing approach in preventing such harm. Our view is that there is not a strong case for introducing more regulatory structures and rules in this sector. We are not, therefore, recommending positive licensing.

Serious misconduct by estate agents should be dealt with by efficient enforcement and penalties which are high enough to deter such misconduct. We will work to improve co-ordination between Trading Standards, OFT and the Ombudsmen for a more rapid, prioritised response to complaints about estate agents which raise serious concerns.

The prospect of additional income may give the estate agent a financial incentive to prefer some buyers over others. We recommend that, as part of its work on the future of estate agency regulation, Government consider further whether the potential for conflicts of interest should be removed, including a ban on such payments.²⁷

²⁷ Ibid

6 Past consultations

6.1 Introduction: calls for tighten regulation

In recent years there have been calls to strengthen the regulation of estate agents. In May 2013, for example, the [RICS](#) called on all estate agents to sign up to a professional regulation scheme, to ensure consumers are dealing with an agent who is suitably qualified to broker their sale and to advise on the process involved.²⁸ Currently, the [Propertymark website](#) (a trade body) is calling on the Government “to create the structures for a properly regulated industry, whose professional knowledge and skills are trusted and respected by all”.

Significantly, the [Conservative Party Manifesto 2017](#) committed to “reform and modernise the homebuying process so it is more efficient and less costly”.²⁹

Recently, there have been several consultations which, amongst other things, have considered the introduction of a new approach to the regulation of estate agents. Each consultation, together with the Government’s response, is summarised below.

6.2 Call for evidence: improving the home buying and selling process (2017)

On 22 October 2017, the Ministry of Housing, Communities & Local Government published “[Improving the home buying and selling process – Call for Evidence](#)”. Views were sought on how to make the process of home buying and selling cheaper, faster and less stressful. The consultation closed on 17 December 2017.

In its consultation paper, the Government asked the following questions about the current regulation of estate agents:

- **Should all estate agents be professionally qualified?** Although estate agents are already subject to regulation, there is no requirement on

²⁸ “[RICS calls for compulsory qualifications for all agents](#)”, RICS press notice, 3 May 2013

²⁹ [Conservative Party Manifesto 2017](#) – “A Conservative Government will reform and modernise the home-buying process, so it is more efficient and less costly

individual to undertake any professional training before they can work as an estate agent – should this change?

- **Is the apparent reluctance to complain about poor service received from estate agents because people are not aware of how to raise a complaint?** In asking this question the Government acknowledged that changes to consumer protection regulations have had an impact on the way in which estate agents operate, and BEIS research suggests that most people were satisfied with the service they received from their estate agents.³⁰
- **Do consumers benefit from these referral arrangements and are referral always being disclosed to consumers?** Some consumers are guided by their estate agent towards using a certain surveyor, conveyancer or mortgage broker and these estate agents may be in a commercial relationship with this party and receive a referral fee in exchange for making an introduction.³¹ The Government is concerned that these referrals may increase costs to consumers and hamper competition.

The Government published its [response](#) to the consultation in April 2018.³² It concluded that there was no “silver bullet” – no single fundamental change which would improve the home buying and selling process.³³ Instead, the Government proposed smaller, incremental changes to the current system, which when taken together are intended to make the process “quicker, cheaper and less stressful”.³⁴ As part of its Action Plan, the Government proposed the following steps to strengthen the regulation of estate agents:

- consult on creating a mandatory professional qualification for estate agents,
- strengthen enforcement of the existing regulatory framework for estate agents; and
- increase the transparency of referral fees.

Further detailed information on each proposal is provided below.

³⁰ Department for Business, Energy and Industrial Strategy (BEIS), [Research on buying and selling homes: Research paper number BIS/283](#), 22 October 2017, p57

³¹ In England and Wales, unless the estate agent is a qualified chartered surveyor or solicitor, he/she will liaise with other professional parties. In Scotland, a solicitor will manage much of the property sale.

³² Ministry of Housing, Communities and Local Government, [“Improving the home buying and selling process: summary of responses to the call for evidence and government response”](#), April 2018

³³ Ibid, page 4

³⁴ Ibid, page 4

Regulation to be strengthened

The Government said it would look to introduce a mandatory professional qualification for estate agents with an on-going requirement to undertake Continuing Professional Development. It said:

60. In light of the strong response in favour of further estate agent regulation, we will look to **introduce a mandatory professional qualification for estate agents with an on-going requirement to undertake Continuing Professional Development**. We have already committed to regulating letting agents, including setting minimum entry requirements. Our response to the [Call for Evidence 'Protecting consumers in the letting and managing agent market'](#) was published earlier this month and outlines our approach to regulating letting and managing agents.³⁵ We are keen to ensure that any new regulatory framework is joined-up across letting, managing and estate agents.

61. We will **bring forward a consultation on minimum competency requirements later this year, and as part of this we will consider the case for creating a licencing regime**. In order to develop this consultation, we will shortly set up a working group comprised of industry, ombudsmen and regulators to provide advice and guidance on a joined-up regulatory framework.

62. The outcome of this consultation will determine whether we need to introduce primary legislation or use existing powers. If needed, we would aim for further regulation to come into force before the end of this Parliament. Any proposed changes will also have to be considered in the light of our work on strengthening consumer redress arrangements in the housing sector.

63. **In the interim, we will work with National Trading Standards to strengthen enforcement of the current regulatory framework**. We will increase the level of funding for the National Trading Standards Estate Agency Team in order to allow them to conduct more proactive investigations into potential breaches of the Consumer Protection Regulations, which should reduce the potential for complaints.³⁶

Raising consumer awareness on how to complain

Regarding whether the sector should do more to make consumers aware of how to complain about an estate agent, the Government's response was as follows:

It is clear from the responses that more needs to be done to inform consumers about how to complain. We have recently launched a [consultation on strengthening consumer redress in the housing](#)

³⁵ Ministry of Housing, Communities and Local Government, [Protecting consumers in the letting and managing agent market: call for evidence](#), October 2017, see also the [Government's response](#), April 2018

³⁶ Ibid

[market](#)³⁷ and will use the findings to inform our work improving the complaints process for consumers.

34. We will continue to work with industry, ombudsmen and the regulator to encourage estate agents to share their code of conduct, which should contain details of their ombudsman membership, with clients. Training on this issue may also feature in our mandatory qualifications to work as an estate agent.

35. We will also include information on complaints procedures in our [‘How to Buy’ guide](#) and give guidance on things to bear in mind when dealing with estate agents, such as their obligation to disclose their ombudsman membership. We hope that these changes will mean that consumers are clearer about how to make a complaint and would feel confident in doing so if the service they received was unsatisfactory.

36. We also acknowledge that the responses from some respondents who felt that the current complaints process is not ‘worth it’ and will work with the ombudsmen and regulator to address this issue. This may include steps to make the public more aware of the action they are taking.³⁸

Referral fees

On the question of referral fees, the Government said it would work with estate agents, their trade bodies, the ombudsmen and the regulator to develop a standardised approach to reporting referral fees. In its response, the Government said that greater transparency would improve competition and enable consumers to make an informed decision:

In the light of the clear response to the questions on referral fees, the government will work with estate agents, their trade bodies, the ombudsmen and the regulator to develop a standardised approach to reporting referral fees. We will increase the level of funding available to the [National Trading Standards Estate Agency Team](#) so that they can proactively monitor agents to make sure that agents are making these fees clear to customers and to take enforcement action where this is not happening.

44. We believe that this transparency will create a level playing field and ensure that customers are aware of the extent of any commercial arrangements before they make a decision to appoint a firm. The government will also cover referral fees as part of its [‘How to Buy’ and ‘How to Sell’ guides](#), to make sure that consumers understand and then can act on this information.

³⁷ Ministry of Housing, Communities and Local Government, [Strengthening consumer redress in the housing market: a consultation](#), February 2018 (consultation ran from 18 February to 16 April 2018); see also [Strengthening consumer redress in the housing market – summary of responses to the consultation and the Government’s response](#), January 2019

³⁸ Ibid

45. The government has also recently launched [a consultation on proposals for a single housing ombudsman](#)³⁹ and as part of this work we will consider the level of resources which need to be devoted towards enforcement of estate agent regulations.⁴⁰

However, the Government said it would need to consider further the case for banning referral fees altogether.⁴¹ On the one hand, a ban could have a positive impact, and may lead to consumers receiving recommendations based solely on anticipated levels of service. On the other hand, there may be a negative impact, with referral fees being driven underground or consumers making choices purely on cost grounds rather than service levels. However, it was clear to the Government that as a minimum there needs to be greater transparency. To this end, it would be taking action to ensure that home buyers and sellers are made aware of any commercial arrangements before they enter into agreements.⁴²

In February 2019, the NTSEALT published [guidance on referral fees](#) received by estate agents across the UK.⁴³ The aim of the guidance is to ensure that all referral fees are open and transparent to consumers. The Government said it would consider banning referral fees if this could not be achieved by the industry.⁴⁴ The NTSEALT is to monitor the market and report to ministers on agents' compliance with the guidance.⁴⁵

Further information is provided in a separate briefing paper, "[Improving the home buying and selling process in England](#)".

6.3

Regulation of Property Agents: Working Group (2019)

The [Regulation of Property Agents: Working Group](#) was set up in October 2018. Its remit was to advise the Government on a new regulatory approach to letting, managing and estate agents,⁴⁶ in line with the Government's responses to its calls for evidence on [Protecting Consumers in the letting and](#)

³⁹ Ministry of Housing, Communities and Local Government, [Strengthening consumer redress in the housing market: a consultation](#), February 2018 (consultation ran from 18 February to 16 April 2018); see also [Strengthening consumer redress in the housing market – summary of responses to the consultation and the Government's response](#), January 2019

⁴⁰ Ibid

⁴¹ Ibid

⁴² Ibid

⁴³ NTSEALT, [Guidance on Transparency of fees involving property sales – Compliance with the Consumer Protection from Unfair Trading Regulations 2008](#), February 2019

⁴⁴ NTSEALT, [National Trading Standards Estate Agency Team launches new industry guidance on referral fees](#), press article, 28 February 2019

⁴⁵ Ibid

⁴⁶ [Regulation of Property Agents: Working Group - Terms of reference](#)

[managing agent market](#)⁴⁷ and [Improving the home buying and selling process](#).⁴⁸ Lord Best was asked to Chair this Working Group, which began meeting in November 2018 and formally met a total of eight times.

A final report, “[Regulation of Property Agents Working Group](#)”, was published in July 2019.⁴⁹ The Working Group agreed with Government that a new approach to property agent regulation is needed. It outlined its reasoning as follows:

Regulation will provide the opportunity to prevent bad practice and drive cultural change within the industry, focussing on prevention rather than enforcement after the event. Moreover, it could help drive efficiencies in the sector, including by improving processes and behaviours, for example:

- Clarification of roles and responsibilities between a regulator; professional bodies; trade associations; redress providers; and enforcement bodies will add much needed clarity and simplicity to the sector.
- Establishing a mandatory code or codes of practice will enable a reduction in unnecessary codes and the considerable costs of maintaining such codes.
- A new independent regulator that is open, transparent and publicly accountable will be in a position to challenge other stakeholders in the sector in terms of how they are offering a value-for-money service, remaining relevant and helping to raise standards, trust and confidence in the public about the sector. There are also potential opportunities for other cost savings.⁵⁰

Regarding the scope of this regulation, the Working Group thought that all those carrying out “property agency work” should be regulated (including estate agents, auctioneers, rent-to-rent firms, property guardian providers, international property agents, and online agents). In addition, the legislation required to regulate property agents should allow for future extension to the scope of regulation.

The Working Group made 53 recommendations, including several recommendations to strengthen the regulation of estate agents. These are summarised below.

⁴⁷ Ministry of Housing, Communities and Local Government, [Protecting consumers in the letting and managing agent market: call for evidence](#), October 2017, see also the [Government’s response](#), April 2018

⁴⁸ Ministry of Housing, Communities and Local Government, “[Improving the home buying and selling process: summary of responses to the call for evidence and government response](#)”, April 2018

⁴⁹ [Regulation of Property Agents: Working Group Report](#), 18 July 2019

⁵⁰ Ibid

Creation of a new independent regulator

First, the Working Group recommended that the Government establish a new independent regulator of property agents as a public body. The regulator to be accountable to the Secretary of State for Housing, Communities and Local Government, and funded by regulated firms and individuals. The regulator to have at their disposal a range of options for enforcement action.

The Working Group suggested that it would be for the new regulator to determine whether professional bodies could, subject to an approval process, deliver some regulatory functions. It also recommended that the new regulator take over responsibility for the approval of property agent redress and client money protection schemes.

The Working Group recognised that a new independent regulator would need to share information and work effectively with other bodies (such as Trading Standards and redress schemes). It said:

There should be a system of flexible working between the new regulator and Trading Standards teams, and the new regulator should set out guidance clarifying their own and Trading Standards' roles with regards to enforcement action to avoid duplication.⁵¹

Licensing: to confirm appropriate qualifications and credentials

Secondly, the Working Group recommended that property agencies and qualifying agents should be required to hold and display a licence to practise from the new regulator. Before granting a licence, the new regulator should check that an agent has fulfilled its legal obligations (such as belonging to a redress scheme and submitting a copy of their annual audited accounts to the new regulator), and that they have passed a fit-and-proper person test. In addition, the new regulator should be able to vary licensing conditions as it sees fit. It would be the responsibility of the regulator to maintain an accessible record of licensed property agents.

Mandatory code of practice: setting out clear standards of behaviour

Thirdly, the Working Group recommended that all property agents be required to adhere to a code of practice.⁵² There should be a single, high-level set of principles applicable to all property agents which is set in statute: the 'overarching' code. Then, underneath, 'regulatory' codes specific to various aspects of property agent practice, binding only on those providing these types of services. According to the Working Group, key principles for the 'overarching' code should include that:

- agents must act with honesty and integrity,
- ensure all staff are appropriately qualified,
- declare conflicts of interest, and
- have an effective complaints procedure in place.

⁵¹ Ibid

⁵² The Government has already committed to requiring that letting agents adhere to a code of practice

To develop and maintain the ‘regulatory’ codes, the new regulator should establish a working group for each sector of property agency to work up sector-specific detail.

Qualifications and training

Finally, the Working Group recommended that as part of this regulatory regime, every property agency should be responsible for ensuring their staff are trained to the appropriate level and clear oversight arrangements are in place for junior staff. To ensure levels of qualification are appropriate yet proportionate, the Working Group recommend that licensed agents should be qualified to a minimum of level 3 of Ofqual’s Regulated Qualification Framework; company directors and managing agents should be qualified to a minimum of level 4 in most cases. The new regulator should also work closely with [Ofqual](#) to develop a robust system of quality control. Continuing professional development should also be a mandatory requirement for licensed agents.

As at the date of this briefing paper, the Government was still considering the report’s recommendations.

6.4

Steering group: new codes of practice (2020)

On 1 July 2020, Baroness Hayter was appointed Chair of a new independent steering group on codes of practice for property agents, to ensure all consumers are treated fairly and all estate agents work to the same standards. The Government has said it will consider any code produced by the steering group in due course.

As outlined in the previous section, the recommendations in the Lord Best report included the development of a single, high-level set of principles as a code that would be applicable to all residential property agents, along with the establishment of a new Regulator and mandatory qualifications for practitioners.

The new code being developed by the steering group will cover all aspects of residential property. In addition to a high-level set of principles, there will also be a number of other more detailed sections developed that are specific to various aspects of the residential property sector (such as sales, lettings and management). The code is being prepared so that it can be “handed over” to the new regulator once established.⁵³

⁵³ See RICS, [New group to raise standards and protect consumers in residential market](#), 1 July 2020

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